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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Pay) CC Docket No. 96-128
Telephone Reclassification)
and Compensation Provisions)
of the Telecommunications)
Act of 1996)

To: The Commission

**REPLY TO COMMENTS ON AND OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION**

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby replies to the comments on and oppositions to petitions for reconsideration of the Commission's *Second Report and Order* in the above-captioned proceeding. The following is respectfully shown:

The various comments and oppositions are generally consistent with positions previously taken by the parties in this proceeding. AirTouch submits this reply for the principal purpose of responding to specific arguments made by payphone industry interests rather than restating the positions of the parties.

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List A B C D E

**I. The PSPs' Arguments Ignore Market Realities and
Indiscriminately Attack All Petitioners**

It cannot escape the Commission's notice that the parties most adamantly opposed to changing the Commission's payphone compensation scheme are those who stand to reap the largest financial benefit from that scheme, which awards all payphone service providers ("PSPs") the same guaranteed rate for all payphone calls without regard to call duration, costs, and other unique market characteristics related to 800 subscriber calls. These parties — the RBOC/GTE/SNET Payphone Coalition (the "RBOC Coalition"), the American Public Communications Council ("APCC"), and Peoples Telephone Company, Inc. ("Peoples") — are the direct beneficiaries of the Commission's default per-call "market rate".

In opposing the various petitions for reconsideration of the *Second Report and Order*, the payphone interests have pursued a straightforward strategy: a broad-brush attack on all assertions by those parties — but, in particular, on AT&T — who are forced to pay a default rate which has been shown to be too high, while ignoring a substantial record proving that the payphone compensation scheme is harmful to the public interest by eliminating competition. AT&T's arguments are not made in a vacuum, however; for the most part they are supported by a broad range of parties representing varied interests.^{1/} On reconsideration, the Commission must consider the entire record and all petitioners'

^{1/} See, e.g., Petition for Reconsideration of Mtel; Comments and Opposition of AirTouch Paging; Comments of the Telecommunications Resellers Association; Petition for Reconsideration of the Consumer-Business Coalition for Fair Payphone 800 Fees.

arguments,^{2/} and should carefully review competition in the payphone industry and modify the payphone compensation rules in an effort to achieve Congress' goal of meaningful competition.^{3/}

The narrow focus of the PSPs is plainly, if unwittingly, demonstrated by the fact they are unaccountably proud of the fact that "[o]nly two months after federal deregulation of the local coin rate, at least four of the five Regional Bell Companies' payphone divisions have raised their rates, mostly to \$0.35 per call." APCC Opposition, n. 22.^{4/} In contrast, the RBOC Coalition — whose members are the very companies cited with approval by APCC for having raised their rates — assert that the new rules "will [not] give PSPs an incentive to raise their local coin rates." RBOC Coalition Opposition at 4. Their own behavior belies this assertion. The RBOC Coalition continues:

"Because the market for such calls is competitive, any increase from the competitive

^{2/} The RBOC Coalition's ludicrous assertion that "[o]nly four of the Petitions for Reconsideration . . . present appropriate issues for reconsideration," RBOC Coalition Opposition at 10, must be rejected.

^{3/} As CBC and AT&T demonstrate, location monopolies continue to thwart competition in the payphone industry. CBC Petition for Reconsideration; AT&T Opposition at 3. This and other features of the payphone market deserve far more scrutiny by the Commission than has been the case to date.

^{4/} See also Peoples Opposition at 6 ("since October 7, 1997, nearly all of the Bell Companies, GTE and most independent PSPs have implemented a \$.35 local coin rate such that \$.35 is the de facto local coin rate nationwide."). Peoples believes these actions justify the Commission's decision; in AirTouch's view, they evidence the lack of competition in the payphone industry. In almost any competitive industry, a rate hike of 20-30% would spur new entrants and a reduction in rates. The mere fact that the RBOCs can raise rates suggests there is little competition in the market.

market price will reduce call volumes and, consequently, PSPs' profits."^{5/} These PSPs have, apparently, chosen to reduce their profits by raising rates.^{6/} In any event, repeated assertions by PSPs that they operate in a competitive market^{7/} are belied by the record of this proceeding, and do not change the Commission's conclusions in 1996 and again in 1997 that the payphone market is not competitive.^{8/}

Unlike the PSPs, the Commission must be deeply concerned about the anticompetitive and anti-consumer effects of lockstep pricing on a nationwide basis by the largest PSPs in the industry, who do not operate in a competitive market. What is particularly telling about the PSPs' arguments is their total disregard for the comments of a wide cross-section of parties affected by the payphone compensation rules, represented by the Consumer-Business Coalition (whose comments are virtually ignored by APCC),

^{5/} This misunderstands competition. An increase in rates, if the market is competitive, will spur new entrants, not reduced traffic. In a market with limited competition — like the payphone market — rates can be increased to allow carriers to extract supra-competitive rents without any impact. Based on the admissions of the payphone operators themselves, this appears to be what has happened.

^{6/} Peoples' statement that the PSP industry "is poised to become even more competitive," Peoples Opposition at 5, begs the question of why the industry has not become more competitive in the past two years.

^{7/} See, e.g., RBOC Coalition Opposition at 4; APCC Opposition at 11; Peoples Opposition at 2.

^{8/} The Commission expressly found in 1996 that the payphone market is not competitive, *Report and Order*, CC Docket No. 96-128, 11 FCC Rcd 20,541, 20,547 (1996), and has not reconsidered this finding. See *Second Report and Order* at paras. 11, 15.

paging companies, and numerous others^{9/} who have supplied ample record evidence of the harmful impact of the Commission's payphone decisions on their customers.^{10/}

For its part, the RBOC Coalition has a penchant for simple answers. For example, the RBOC Coalition would lead the Commission believe that the "simple answer" to payphone fraud is that "[g]iven IXCs' responsibility for tracking calls, ... fraud ... will be easily stamped out." RBOC Coalition Opposition at n.7. The RBOC Coalition does not explain how fraud will be addressed, for example, where calls cannot be tracked because PSPs are not providing coding digits, which is a concern expressed by petitioners. The RBOC Coalition also asks the Commission to "ignore special interest pleading," RBOC Coalition Opposition at 15 — although not its own, one assumes. Following the RBOC Coalition's simplistic advice would disserve the public interest.

Similarly, the RBOC Coalition makes the simplistic assertion that "the argument for 'calling party pays' is foreclosed" because the Court of Appeals affirmed the Commission's decision on this matter. RBOC Coalition Opposition at 7-8. The RBOC Coalition ignores the fact that the Court's decision to uphold a carrier pays scheme was based, in substantial part, on the Commission's assurances that call blocking would check a PSP's ability to collect rates not agreed to by a "buyer" of its services.

^{9/} See, e.g., Petition for Reconsideration of American Alpha Dispatch Services, Inc.; Direct Marketing Association.

^{10/} Indeed, the public's perception of this whole payment scheme is best summed up by the comment of an AirTouch customer: "are [they] crazy?"

The Commission argued before the Court that its default per-call compensation rate — then \$0.35 — should be upheld because IXC's “will be able to ‘block’ calls from overpriced payphones and, therefore, will be able to negotiate lower rates if the local coin rates are too high.”^{11/} The Court relied on these assurances that call blocking would serve as a fundamental check on a PSP's ability to set unreasonably high rates that carriers could not avoid, stating that “a ‘buyer’ (the carrier or the 800 service subscriber) will have the option of rejecting a ‘seller’s’ (the PSP) excessively priced service.”^{12/} Since the IPTA decision, certain of the Commission's assumptions have proved to be incorrect, causing the Commission to waive PSPs' obligations to transmit payphone-specific coding digits — the prerequisite for call blocking.^{13/} As a result, nothing forecloses the Commission from reconsidering the merits of a caller pays system.

APCC, too, ignores market realities regarding call blocking. APCC asserts that “even if the requisite database for blocking purposes has not yet been created, there is no necessity to generate it until such time as per-call compensation is tied to individual PSP's prices.” APCC Opposition at 37. In other words, APCC does not believe blocking of calls charging the default rate should be permitted. What APCC and

^{11/} Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555, 564 (D.C. Cir. 1997) (“IPTA”).

^{12/} *Id.* at 567.

^{13/} It is interesting that the PSPs also have opposed any waivers which are similar to the one they sought for coding digits. This shows the unreasonableness of their positions.

the RBOC Coalition fail to understand is that it is precisely because the default rate is excessive that 800 subscribers wish to avoid charges. Adoption of a caller pays compensation system, as urged by numerous petitioners, would remedy the obstacles to a true market-based system posed by the unavailability of call blocking.

In sum, the Oppositions of the payphone interests have failed to address substantive issues about the competitive status of the payphone market, including the merits and viability of call blocking. These issues deserve far more scrutiny by the Commission than the RBOC Coalition and other PSPs have mustered.

II. The Record Supports Further Reduction of the Default Rate

Should the Commission decline to reconsider its carrier pays, "market rate" scheme, AirTouch believes that, on balance, the record with respect to costs compels further reductions in the default compensation rate. Notwithstanding their attacks on cost data provided by AT&T and others, the RBOC Coalition cannot hide from the fact that it has failed to supply cost data on behalf of its members, who constitute the vast majority of the provider market. AirTouch agrees with Sprint^{14/} that the RBOC Coalition's posture of attacking others' cost data while offering none of their own undermines the credibility of their attacks. Clearly, the RBOC Coalition members know how to prepare cost data, and in many instances have the cost data available for payphones, because their local coin rate was regulated. The only inference the

^{14/} Sprint Opposition at 7.

Commission should draw from their failure to provide data is that it would show the rates are not supported by their costs. The Commission must require them to show this data.

In particular, AirTouch agrees with studies that show that the Commission did not overstate avoidable costs^{15/} and that bad debt and collection costs are properly excluded.^{16/} With respect to PSP claims that the Commission's allocation of ANI costs should be reconsidered,^{17/} these assertions have been thoroughly debunked by the various petitions for reconsideration. Finally, AirTouch disagrees with the RBOC Coalition^{18/} that petitioners have not shown that there are cost differences between different types of coinless calls. Ignoring these differences^{19/} is contrary to the mandate of the Court of Appeals that the Commission consider such differences, and the Commission should do so on reconsideration of the *Second Report and Order*.

III. The Commission Should Revisit its Entire Approach to Payphone Compensation

AirTouch suggests that the Commission step back from the current debate to focus on its objectives and discern what will best achieve those objectives. The Commission has stated that its goals are to ensure (1) that a competitive market for

^{15/} See, e.g., Sprint Opposition at 4-6; AT&T Opposition at 12.

^{16/} See Sprint Opposition at 9.

^{17/} See, e.g., RBOC Coalition Opposition at 15.

^{18/} RBOC Coalition Opposition at 9.

^{19/} See, e.g., Petition for Reconsideration of Paging Network, Inc.

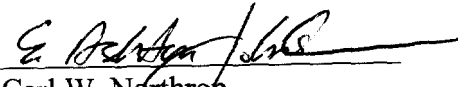
payphone calls develops, and (2) that PSPs are fairly compensated for each and every call. There are really two approaches to achieving these objectives: (1) a truly market based approach where the buyer has the incentive to choose the best value, or (2) a regulatory rate created by the Commission. Unfortunately, the Commission has picked the second approach.

The Commission should reconsider whether its chosen approach best meets its objectives and hence the public interest. The first approach, advocated by the paging industry, better meets the Commission's objectives because the rates would be set in the marketplace and not by special interests before the Commission. Moreover, hundreds of millions of dollars of network changes by PSPs and IXC's could be avoided. It is ironic that, to date, the Commission's goal of immediate compensation for PSPs has met with four rounds of reconsideration and two court challenges. AirTouch anticipates that the Commission's Rules will continue to be subject to reconsideration and appeal so long as they do not fit market realities. If the Commission had chosen the other approach, the PSPs would be receiving compensation and challenges would have been minimal. The Commission should therefore strongly consider rethinking its entire approach in order to develop a workable system that conforms to statutory objectives.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sharon L. Henry, hereby certify that I have on this 20th day of January, 1998, caused a true and correct copy of AirTouch Paging's foregoing "Reply to Comments on and Oppositions to Petitions for Reconsideration" to be sent by first-class United States mail, postage prepaid, to the following:

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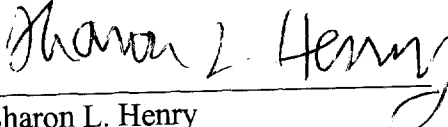
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